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BIENNIAL MESSAGE

OF

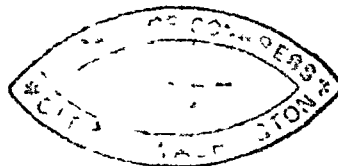
HIS EXCELLENCY

L. F. GROVER,

TO THE

LEGISLATIVE ASSEMBLY OF OREGON.

SEVENTH REGULAR SESSION---1872.



SALEM, OREGON:
EUGENE SEMPLE, STATE PRINTER.
1872.

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1872P

MESSAGE.

*To the Senate and House of Representatives of the State
of Oregon:*

GENTLEMEN—

On the recurrence of each succeeding biennial session of your honorable body, it is interesting to note the evidences of our development as a State, and of our progress as a community.

Never have the assurances of our coming strength and stability been more marked than at the present time. Acknowledging the leading hand of Providence in all our advancement, let us endeavor to subordinate the struggles of political parties and of persons to the ever-commanding interests of the people, and so to conduct our public action as always to keep in view the chief public good. Gathered here from widely-separated fields of action, and from diversified pursuits of life, and representing the various interests of the State, it is your high privilege to deepen and strengthen the foundations of our institutions, and to give new impulse to the current of our prosperity.

Since your last meeting our people have been blessed with general health; abundance has crowned our harvests, and success has followed most of our enterprises. Alive to the importance of our present position, and realizing

the advantages with which nature has endowed us as a State, let us emulate each other in the high endeavor to place our youthful commonwealth on the solid pathway to future eminence among her sisters of the Union.

In exercising my constitutional duty to give to the Legislature information touching the condition of the State, I lay before you the following accounts and suggestions concerning the various important matters affecting the administration of public affairs during the past two years:

FINANCES.

On examination of the reports from the accounting Departments of the State for the biennial period beginning September 6, 1870, and ending September 6, 1872, the following statement is submitted:

RECEIPTS.

Balance in Treasury September 6, 1870.....	\$267,939 48
Received since—General Fund, coin.....	405,825 76
“ “ General Fund, currency.....	670 00
“ “ Common School Fund, coin..	82,170 58
“ “ Common School Fund, currency.....	32,258 09
Received since—University Fund, coin.....	31,973 39
“ “ University Fund, currency..	3,710 03
“ “ State Land Fund, coin.....	67,395 24
“ “ State Land Fund, currency..	35,943 52
“ “ Escheat Fund, coin.....	846 20
“ “ Escheat Fund, currency.....	532 14
“ “ Five per cent. U. S. Land Sale Fund, currency.....	13,306 08
Total.....	<u>\$942,570 51.</u>

DISBURSEMENTS.

Paid on current liabilities exist-		
ing before Sept. 6, 1870.....	\$281,773	14
Paid Soldiers' Bounty and Re-		
lief Bonds.....	32,950	28
Paid tug boat subsidy.....	12,841	95
Paid Common School and Uni-		
versity loans, distributions,		
etc	143,767	67
Paid support of Penitentiary...	45,475	33
Paid Penitentiary Building.....	49,337	53
Paid Insane and Idiotic.....	65,871	95
Paid Legislative, Executive,		
Judicial, Public Printing,		
Conveyance of convicts and		
insane, etc.....	137,955	25
Total.....	\$	769,973 10

FUNDS IN TREASURY SEPTEMBER 6, 1872.

General Fund, coin.....	\$ 5,533	91
“ “ currency.....	979	00
Common School Fund, coin.....	2,464	69
“ “ “ currency.	1,759	09
University Fund, coin.....	68	55
“ “ currency.....	251	14
State Land Fund, coin.....	25,557	16
“ “ “ currency.....	35,813	06
Soldiers' Bounty and Relief		
Fund	83,466	44
Escheat Fund, coin.....	1,612	92
“ “ currency	1,785	37
Five Per Cent. Fund, Currency	13,306	08—\$172,597 41
Total.....		\$942,570 51

 LIABILITIES OF THE STATE.

This State has no funded debt.

Bonds issued for construction of Canal and Locks at the Falls of Willamette river, \$200,000 00.

This sum is to be paid out of funds arising on sale of State lands held under internal improvement grant of 1841, and the five per cent. of net proceeds of sales of public lands in Oregon.

SOLDIERS' BOUNTY AND RELIEF BONDS.

Bounty bonds.....	\$44,450 00
Relief bonds.....	46,027 00
Total	<u>\$90,477 00</u>

Outstanding Treasury warrants, \$76,883 69.

To these must be added the deficiencies not audited, chiefly arising from accounts for conveying and keeping the insane, and for the construction of the new Penitentiary building.

It will be observed that the Military Fund in the Treasury is nearly sufficient to pay off the Soldiers' Bounty and Relief Bonds. A majority of these bonds have been advertised for redemption, and might be liquidated in full within the next two years.

There are funds, also, in the Treasury sufficient to pay one-quarter of the canal and lock bonds. But a considerable portion of these funds are in currency, while the bonds are payable in gold. Authority to convert the currency into gold will be requisite before the currency funds can be applied to the liquidation of the bonds. It is probable that one-half of the canal and lock bonds, or the amount of one hundred thousand dollars thereof, could be canceled by payment within the next two years if the

Legislature should so direct by appropriation, and the holders of the bonds should present them for payment.

These bonds run ten years from the date of their issue, unless a voluntary redemption of them occurs before their maturity. In case provision be not made for early redemption, an act should be passed giving the Treasurer authority to loan the moneys accumulating in the Internal Improvement Fund. The bonds bear interest at seven per cent., and the moneys can be loaned at ten per cent. per annum. A revenue of three per cent., per annum, can be made on all moneys of this fund, by holding and loaning them until the bonds are due. But, I think it the best policy to liquidate all these liabilities at the earliest practicable day, and to exhibit a State free from obligations of any kind.

THE FIVE PER CENT. FUND.

It will be observed that, in the statement of balances in the Treasury, the amount derived from the five per cent. of the net proceeds of sales of the public lands within the State is given at \$13,306 06. Of this sum, \$1,545 92 was received during the administration of Governor Gibbs, and \$11,760 16 during the present administration, making the full amount now in the treasury. But during the term of office of my immediate predecessor, there was received from the United States Treasury, on account of this fund, the sum of \$5,424 25, which was embezzled by the officer receiving the same. The whole amount paid to this State on account of the Five Per Cent. Fund has been \$18,730 33.

The correspondence with the Treasury Department and the General Land Office concerning this fund, is herewith communicated. It will be observed that the sum received

by Governor Gibbs, having been paid into the School Fund without separate report of the same to the Legislature, it did not at first appear that any of this fund had been paid to the State at the time this correspondence was undertaken.

STATE TAXATION.

There is now a manifest inequality in the assessments of the several counties in this State, returned upon the same classes of property of equal value. There also exists in several counties a gross undervaluation of all classes of property. While this condition of things would make but little difference with the county finances, it greatly diminishes the funds which should come into the State treasury; being based upon a percentage of the assessments, and not upon a fixed proportion to be raised by each county.

There is another defect in our taxing system, which works, perhaps, a greater inequality and injustice than those named. In assessing property, under the present law, the party assessed is permitted to deduct his indebtedness from the valuation of his property. In counties where property is assessed at one-third its real value, as is the case in most counties, a person being in debt one thousand dollars would pay no tax; for his property, worth three thousand dollars, would be valued at one thousand by the assessor, which would be balanced by his indebtedness of one thousand dollars. But a prudent neighbor, worth the two thousand dollars or any other sum, and not in debt, would be required to pay taxes on the full amount of his assessment. It will thus be seen, that every dollar of indebtedness, under our present mode of assessment, may balance real value of property to the amount of three dollars. And if the indebtedness of our citizens, taken

collectively, amounts to ten million dollars, the amount of property untaxed, on this account, is thirty millions. Again, there is a gross undervaluation of the property of the whole State, produced by our present vicious mode of assessment. This State has property, at its cash value, over and above liabilities, to the amount of one hundred and twenty millions. Our last State assessment was thirty-four millions. During the last ten years we have doubled our population and increased the value of our property fourfold, but our assessment rolls show an increase of property valuation of less than thirty-five per cent.

With five times as many insane to support, and four times as many State prisoners to keep as we had ten years ago, with other expenses incidentally greater, as we increase in population, how can the State be kept out of debt, even on account of current expenditures, without sound assessments according to the increase of property?

Our State is organized upon the most economical basis; and if there is one sentiment in our Constitution more prominent than another, it is the mandate to keep free from debt. It will be proper in this connection to call your special attention to a clause of that instrument which has heretofore been passed with little heed, but which, if observed, will have a most salutary effect upon our public finances. I refer to Article IX., Sec. 6, which reads as follows: "Whenever the expenses of any fiscal year shall exceed the income, the Legislative Assembly shall provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year."

No legislation under this requirement will be necessary, nor need there be any increase of the rates of taxation if our assessment law be modified in the proper manner, and

a State Board of Equalization be created, which I recommend.

Upon the question of deductions on account of liabilities, it may be remarked that it has become the settled policy in States having the soundest financial systems, to make no deductions from their valuations of real estate on account of personal liabilities; and as real estate is the basis of all property, it is a question among writers on political economy whether real estate alone should not constitute the basis of taxation.

PUBLIC LANDS OF THE STATE.

On the accession to office of the present State Administration, none of the public lands to which the State was entitled under the various acts of Congress, requiring selection by the State authorities, and approval by the Land Department of the United States had been secured to the State, except a part of the *Internal Improvement* grant of 500,000 acres.

Selections, indeed, from time to time, had been made of the University lands and the indemnity school lands, by different officers, under several different acts of the Legislature; but no work in this respect had received approval at the local land offices in Oregon, and no proper presentation of them had been made to the General Land Office of the United States; so that no lands of these classes had become vested in the State. To secure title to all the public lands belonging to the State, has been a leading object of the present Executive. The efforts made in this behalf have been attended with a good degree of success.

THE UNIVERSITY LANDS.

The grant of Congress for the support of a State University, consists of forty-six thousand and eighty acres of

land. Efforts at locating these lands began as early as 1853, but owing to irregularities of the work, and misapprehension of its condition, the locations remained totally unrecognized by the United States, and consequently open for pre-emption or homestead settlement. From these facts, many of the lands first selected under this grant have been lost to the State, and others of necessarily a poorer quality, had to be located to fill the grant. In listing the University lands for final approval, great care was taken to cover all of the former listings of lands which were occupied by settlers under the right of the State, and especially to secure all former listings which could be held free from conflict with rights of settlers under any other claim of title. This entire grant, with the exception of a small part held in suspense by the United States, for adjustment of abandoned donation rights and other incidental, apparent, but not real conflicts, have been fully listed, approved by the local land offices, and by the General Land Office, and the Secretary of the Interior, constituting perfect title in the State.

INDEMNITY SCHOOL LANDS.

The lands to which the State was entitled, to be taken in lieu of those portions of the sixteenth and thirty-sixth sections in each township, for common school purposes, which were occupied by settlers in advance of the surveys, were found in the same condition as the University lands. None of them had become vested in the State, and nothing had been done in relation thereto which had been recognized by the General Land Office of the United States. The work of listing and securing the full approval of the indemnity school lands, as far as the public surveys had extended last year, has been accomplished, with the

exception of a portion of those lying east of the Cascade Mountains; and in relation to these latter, they have been properly listed by the State and approved by the La Grande Land Office, but yet await final action at Washington. The amount of indemnity school lands which have been selected and vested in the State within the past two years, is one hundred and seven thousand eight hundred and thirty-seven acres. This work will be required to be constantly followed up as the public surveys progress, from year to year, until the public surveys shall embrace the whole State.

AGRICULTURAL COLLEGE LANDS.

The act of Congress of July 2d, 1862, donating public lands to the several States which may provide colleges for the benefit of agricultural and mechanic arts, provided that the lands selected by any State within its borders under said act should be taken from such as were subject to private entry. But the commission appointed by the Legislature four years ago to select the ninety thousand acres to which this State is entitled under this grant, not being able to find any considerable body of public lands within the State subject to private entry; located the entire quantity of these agricultural selections in the Klamath Lake basin, in Southern Oregon, on surveyed public lands of the United States of good quality, but not technically subject to private entry. Basing objection on the ground that these selections were not lands subject to private entry, the Land Office at Roseburg, within which district the lands lie, refused to approve the selections.

This was the condition of this class of lands two years ago. It was found necessary that an act of Congress should be passed to enable the State either to hold these selec-

tions or to make new ones in accordance with the act of 1862. On presentation of the matter to our delegation in Congress, they procured, at the last session, the passage of an act which provides "that the lands granted to the State of Oregon for the establishment of an agricultural college by act of Congress of July 2, 1862, and acts amendatory thereto, may be selected by said State from any lands within said State subject to homestead or pre-emption entry under the laws of the United States; and in any case where land is selected in the State, the price of which, if fixed by law at the double minimum of two dollars and fifty cents per acre, such land shall be counted as double the quantity toward satisfying the grant; that any such selections already made by said State, and the lists duly filed in the proper district land office, be and the same are hereby confirmed, except so far as they may conflict with any adverse legal right existing at the passage of this act."

The act also provides that "said lands shall not be sold by the State for less than two dollars and fifty cents per acre; and when settlement is made upon the same, preference in all cases shall be given to actual settlers, at the price at which said lands shall be offered."

The lists of the Agricultural College selections are now awaiting action of the new land office at Linkton, under the foregoing provisions of the late act of Congress, and will doubtless be shortly approved. It is understood that none of these lands which have been selected fall within reach of any railroad grant, so that the State will probably secure the full amount of the ninety thousand acres at first selected. As these lands will, within a short period, be fully vested in the State, legislation providing for their sale will be proper. Indeed, to facilitate the settlement of the southern portion of the State, it is important that this

legislation be had at the present session. In making provision for the disposal of these lands, I would suggest that the general policy of the State, heretofore adopted, in disposing of all her arable lands in limited quantities, and favoring actual settlers, be still adhered to.

INTERNAL IMPROVEMENT GRANT.

Of the grant of five hundred thousand acres to the State for internal improvements, by Act of Congress of Sept. 4, 1841, four hundred and fifty-six thousand seven hundred and eighty-nine acres, are now finally approved and fully vested in the State, and the balance being duly listed and approved by the local land offices, will be within a short time certified as approved by the General Land Office; the principle on which these latter lists were suspended, having been already settled in favor of the State selections.

SWAMP LANDS.

By the Act of Congress approved September 28th, 1850, it was provided "that to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this Act, shall be, and the same are hereby granted, to said State." The provisions of this Act were extended to Oregon by Act of Congress approved March 12, 1860.

The policy of the General Government conveying the swamp lands lying within the borders of the several States to the respective States in which they are found, is a well settled one. To the States interested, it is important, as it gives them the control of extensive portions of the common domain, which, if not so granted, might lie waste and become sources of disease, breeding malarious

distempers. It is also important to the States interested, that these lands should be reclaimed so as to become fit for agricultural occupancy, and consequently subject to taxation.

But little notice was taken of this important grant by the public authorities of this State until the session of the last Legislature, at which an Act was passed bearing date October 26, 1870, entitled "An Act providing for the selection and sale of the swamp and overflowed lands belonging to the State of Oregon." This Act provided that the Board of School Land Commissioners should appoint deputies to proceed as soon as practicable, to select in the field all the lands rendered unfit for cultivation by inundation or overflow within this State, and to make return of the same to said Commissioners.

Pursuant to this authority, deputies have been appointed who have proceeded to the field and made selections in their several districts of such land as they deemed to fall within the description of said Acts of Congress, omitting under instructions from the Board, all such swamp lands as are claimed and occupied by *bona fide* settlers, under whatever right they claim. The amount of swamp and overflowed lands so selected, free from conflict, and reported to the Board up to the present time is 174,219.97 acres, lists of which have been duplicated and duly forwarded for filing in the office of the Surveyor General of Oregon.

In examining the title of the State to these lands, and the condition of the grant, I found that there had been a practical omission on the part of the Department of the Interior to execute the laws of Congress making this grant, as far as the same related to Oregon. The usual special instructions sent to Surveyors General of other

States, holding under the same acts of Congress, directing a segregation of the swamp lands, had not been transmitted to the Surveyor General of this State. Deputy United States Surveyors in the field had generally made no note of the swamp lands, but had returned all this class of lands as arable, and the several local land offices had been accustomed to dispose of them without reference to the title of the State, as public lands of the United States, subject to homestead and pre-emption settlement. By this means considerable portions of the swamp lands owned by the State, and which are still vested in the State, had been disposed of as the lands of the United States.

A letter was addressed by me to the Secretary of the Interior, bearing date November 9th, 1871, calling his attention to the acts of Congress under which we hold these lands, and to the omission of the Land Department of the United States to execute these laws. The correspondence upon this subject is herewith accompanying. In this correspondence I have urged the General Land Department to execute the swamp land laws of Congress in favor of Oregon, as they have been executed in favor of other States, under the same laws, and to suspend all action of our local land offices involving adverse possession of these lands, until the question of title could be adjusted between the State and the United States. On the part of the Secretary of the Interior and the Commissioner of the General Land Office, a willingness has been indicated to enter upon the segregation of the swamp lands, but no work has been done in that direction by them, and no instructions have been issued, to the knowledge of the Executive, in answer to the requests contained in the correspondence. I can state, therefore, as the present condi-

tion of this important interest, that the acts of Congress making the swamp land grant to Oregon remain practically unexecuted by the Land Department of the United States. In the meantime, lands unquestionably of a swampy character are being disposed of by the local land offices, thus absorbing the property of the State and complicating the title to the swamp and overflowed lands within her borders.

The leading adverse interest militating against the right of the State to the swamp lands is the claim of railroad corporations to hold alternate sections of the public lands for a distance of thirty miles on either side of the lines of their railroads. The swamp lands, being more valuable than adjacent mountain lands which would have to be selected in lieu of the wet lands within the railroad belt, are preferred by the railroad corporation.

In relation to the right of the State to hold these lands, even without any action of the United States Land Department, and without patent, I have not the slightest doubt. In the words of the Commissioner of the General Land Office, in his instructions to the Surveyors General of the several States interested in the swamp land act of 1850, "this act clearly and unequivocally grants to the several States those lands which, from being swampy, or subject to overflow, are unfit for cultivation."

In the opinion of Attorney-General Black, to the Secretary of the Interior, of November 10, 1858, in relation to the same act of Congress under which we hold: "The act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect; and to attain this object, the Secretary of the Interior was directed to make out an accurate list and plats of the lands and cause a patent to be issued therefor. But when a party is

authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but evidence of his title. The authority given to the Legislature to dispose of the land upon the patent, does not make the grantee less the exclusive owner of them than she would be if those words were omitted. * * * The subsequent grant by Congress to the State for the use of the railroad, could not have been intended to take away from the State the rights previously vested in her for other purposes. * * * There are cases in which grants are made under descriptions so vague and indefinite, that neither the grantee nor any other person can tell their location or boundaries, until the grantee does some act which locates and defines them. In such case, if any other right which is strictly defined, intervenes, the first grantee may lose what he would have been entitled to if his own grant had been descriptive or definite. But that principle does not apply here, because the general description of all swamp and overflowed lands within the limits of Arkansas is definite enough for the purposes of notice."

In another opinion of the Attorney-General to the Secretary of the Interior, dated June 7, 1857, in relation to another act of Congress, he says: "When Congress says that a certain portion of the public domain of the United States 'is hereby granted' to a State, what need can there be of any further assurance in order to give the State a perfect title in fee. * * The point is firmly settled if the highest judicial authority can settle anything."

These views of the Attorney General are sustained by leading decisions of the Courts, both State and National, and have heretofore controlled the action of the General Government in administering this class of grants.

The official report of the Secretary of the Interior for

1871-2 gives the following table of the total swamp lands segregated to the several States, under acts of Congress approved March 2, 1849, September 28, 1850, and March 12, 1860, up to and ending September 30, 1871:

	<i>Acres.</i>
Ohio	54,438
Indiana	1,354,732
Illinois	3,267,470
Missouri	4,604,448
Alabama	479,514
Mississippi	3,070,645
Louisiana, Act of 1849.....	774,978
Louisiana, Act of 1850.....	543,339
Michigan	7,273,824
Arkansas	8,652,432
Florida	11,790,637
Wisconsin	4,333,082
Iowa.....	2,583,509
California.....	1,158,626
Oregon.....	
Minnesota	1,129,774

That the Land Department of the United States has done nothing to assist in segregating the swamp lands, can in no manner defeat the title of the State; for I know of no rule of law whereby a grantor under covenants of diligence will be permitted to defeat his own grant by his own neglect.

The title of the State to the swamp and overflowed lands within her borders became vested on 12th day of March, 1860, and subject to the rightful legislation of the State.

In order to save innocent parties settling on the lands of the State before the State took possession and before it

was publicly known what the title of the State was, the Board of School Land Commissioners has caused such settlers' claims to be omitted from the selections of swamp lands. As to these, I recommend the passage of an act granting to such settlers the right of the State thereto, without cost to them—the State looking to the United States for indemnity for involving this title subsequently to the grant to the State by the action of her local land offices. This legislation is necessary to quiet titles and to prevent future litigation and disastrous losses.

TIDE LANDS.

Upon the seacoast of this State, it is estimated that we have a half million acres of lands lying between the ebb and flow of the tide. These lands belong to the State by virtue of its sovereignty, or the right of eminent domain, independent of any title from the General Government. The public surveys of the United States should have been limited to the line of ordinary high tide of the ocean. But owing to inattention to the rights of this State, on the part of those having in charge the work of extending these surveys, the United States government lines have been extended upon the salt marshes, and these surveys have been from time to time approved by the General Land Office, and the tide lands so embraced have been, in many cases, disposed of to donation, homestead and pre-emption claimants, as public lands of the United States. These transactions give no title as against the right of this State. The right to the lands lying between the ebb and flow of the tide has been asserted and maintained in all the States bordering on the sea, and in such cases where, by inadvertency, or by claim of right, they have been disposed of by the United States, such lands have been recovered by those claiming by right of the State title after the same

have been patented by the United States, and even after such patents have been confirmed by special Acts of Congress. It is no favor to settlers for the local land offices, or anybody else to induce them to take lands under claim of property in the United States, which belong to the State of Oregon. The greatest effort and care on the part of Executive officers may not save them harmless.

It is the part of wisdom in us to see to it that the primary disposal of all our public lands be properly made. No greater public service can be rendered at this period of the development of our State, than to assure to the people sound titles to their lands. I have called the attention of the Commissioner of the General Land Office to this subject, and I now recommend that an Act be passed providing for the legal disposal of all the tide lands belonging to the State. In framing such legislation, I will suggest that the rights of all settlers who are in possession of any portion of these lands, claiming under the United States, be protected, and that all the tide flats be held for sale in limited quantities to adjacent settlers at a certain price, for a fixed period, after which those remaining unsold might be disposed of at public auction to the highest bidders.

PENITENTIARY BUILDING.

The act of the Legislative Assembly, approved October 21, 1864, providing for the location of suitable grounds for a Penitentiary and Insane Asylum and for building a Penitentiary, created a Board of Commissioners, who were required "to have constructed, as soon as convenient, suitable wooden buildings wherein to confine the State convicts, preparatory to the erection of permanent buildings for a Penitentiary; to obtain plans and specifications for such permanent buildings; to purchase material for the

same, and to transact all business, by themselves or their authorized agents, necessary for the erection of such portion of such permanent buildings as to them may seem necessary." Specific directions are also given in this act to the Commissioners, how to proceed in the work, and in what manner to incur liabilities and how to adjust them.

Commissioners were elected, who constructed the temporary wooden prison, but proceeded no further. At the session of the Legislature of 1870, Commissioners were elected to fill the vacancies in the Building Board created by the act of 1864, who have proceeded according to the terms of that act and have erected such portion of such permanent buildings as to them seemed necessary for the safe keeping of prisoners. The Assembly, at its last session, also facilitated this work, by an appropriation of fifty thousand dollars.

The temporary wooden structure had become absolutely useless as a prison. It had been condemned as such by two Grand Juries, by the former building Commissioners, and by the report of the last Superintendent; and the duty of the Commissioners to build a permanent Penitentiary was absolute.

I state with certain confidence, that the work is well and economically done. The plan and style of the buildings are after the most improved models; and for safety and sanitary arrangements, the structure is quite complete. The prison is also planned with reference to future enlargements, and with reference to the grading of prisoners according to the improved methods of discipline. The labors of the Commissioners have been laborious and faithful, and the results have had my approval. I call your attention to the report of the Building Commissioners, herewith submitted, and recommend an early appro-

priation to cover the contracts made by them, as I consider them most economically made. Provision should also be made for painting the buildings outside and for ceiling on the inside. The amount of convict labor represented in the new Penitentiary and works, is three millions of brick, and 9,325 days' labor on the buildings. This prison will hold our State prisoners until we reach the number of four hundred, by simply adding iron cells for their keeping.

The buildings, as they now stand, have cost the State \$159,000, represented as follows: \$50,000 cash appropriated; \$58,000, convict labor and proceeds of convict labor; \$51,000, now outstanding in vouchers, issued under the provisions of the act of 1864.

A limited appropriation should be made to assist convict labor in the erection of permanent walls around the prison, and to help the completion of workshops for the employment of convicts. Provision should also be made for utilizing the water power belonging to the State within the prison grounds, which is of first-class character.

These things done, and Oregon may boast one of the most complete Penitentiaries in the whole country.

MANAGEMENT OF THE PENITENTIARY.

I call your special attention to the report of the Superintendent of the Penitentiary herewith transmitted. There has been a marked improvement in the control of this institution. More than double the relative amount of labor has been done than ever before, while expenses have been reduced. The discipline, health and moral conduct of the prisoners have been improved, and the whole prison has been managed in a manner to reflect credit upon the Superintendent and upon the State. A progressive system

of improved discipline is entered upon. A library is provided by the liberality of the citizens of Salem, instruction is given to those who are uneducated, and an earnest effort is being made to make the prison a school of reformation as well as a place of punishment for crime.

In the religious services which are held regularly at the Penitentiary, several of the clergy, resident at the Capital, have manifested great interest and freely devoted much time and labor to assist and instruct the unfortunate inmates. The report of the Rev. A. F. Waller and the Rev. I. D. Driver, who have acted as voluntary chaplains, is herewith accompanying.

I recommend that authority be given by law for leasing the convicts as practiced in other States, and for their continued employment under such a system.

It will be noticed by the prison accounts, that the earnings of convicts have reached the sum of their expenses during the last biennial period, within \$11,000. As soon as the permanent walls are constructed and work-shops completed, the Penitentiary, under the present mode of management, will be self-sustaining.

PARDONS.

In accordance with the provisions of our statute, a report of the pardons granted by me during the past two years, giving the reasons why said pardons were granted, is herewith accompanying. There is no subject within the duties of the Executive more delicate, or one requiring more solicitous attention and well balanced judgment, than the exercise of the power of pardon. Petitions and personal urgency for Executive clemency, toward those who have been so unfortunate as to fall beneath the ban of the law, are almost constant. To examine and weigh all cases

presented, has been with me a matter of conscientious labor, in the performance of which, I have reached such conclusions as the facts presented seemed to warrant at the time.

The number of persons who have been pardoned during the present Executive term, out of two hundred and eighty-six different persons who have been confined in the Penitentiary, is seventeen—of which number six have been released on physician's certificates, showing that they were suffering from incurable diseases, rendering longer imprisonment improper without hospital conveniences, with which the State was not provided at the time of these pardons. It has been held in these cases that further imprisonment would extend punishment beyond the sentence of the law, and inflict such harsh and cruel penalties as are forbidden by our Constitution. One pardon—that of an Indian—was granted on the ground of mistaken identity made clearly to appear; and one for the reason that no conviction could have been had unless the entire jury before whom the case was tried agreed to a recommendation to Executive clemency placed in the record of their verdict, which was done. This pardon was granted after nearly five months' imprisonment. The remaining nine pardons were granted on the usual grounds of clemency stated in the report. In addition to the list of the pardons issued by me, I have given a list of the names of five convicts pardoned by my predecessor on the day before the close of his official term, not reported by him to the last Legislature, and the reasons of the pardons not being assigned.

RAILROAD SUBSIDIES.

Subsequent to the adjournment of the last Legislature

the bill passed at that session known as the Portland Subsidy Bill was refused Executive approval, and, as directed by the Constitution, the same was filed in the office of the Secretary of State, with the objections thereto. This bill, with said objections, will be laid before you by the Secretary of State, to be treated "in like manner as if it had been returned by the Governor." After much further reflection on the question of taxing the people to aid private railroad corporations, involved in said veto, I have been unable to arrive at any other conclusions than those stated; and the subject is now submitted to the final action of your honorable body.

BOARD OF SCHOOL LAND COMMISSIONERS.

The duties of the Board of School Land Commissioners have been arduous and have been promptly and successfully performed. During the past two years they have deeded and bonded 98,740 acres of Common School lands; 10,935 acres of University lands; 149,189 acres of State or Internal improvement lands.

The entire quantity of these lands disposed of prior to September, 1870, on account of the want of record, cannot now be stated.

The Board have heard and determined all conflicts of title, and have kept complete records of all their work. They have also preserved in bound volumes a duplicate original of every deed executed by them. In connection with the work of the Board, I call your attention to Sec. 9 of the Act of October 26, 1868, creating the La Grande Land Office, which provides that upon the failure of purchasers to make prompt payment for lands mortgaged to the State for part of the purchase money, the purchaser shall forfeit all right and title to the land, and the land be

sold to another purchaser forthwith. This is a harsh and crude provision, and, if enforced, would have done infinite injustice.

This provision should be modified with a saving clause against all summary forfeitures under it.

The efficient work of this Board is swelling the amount of educational funds to such importance that more complete provision should be made for the custody and control of funds in the hands of local agents; and particularly in reference to the collection and return of interest for distribution to the schools. Local agents should be required to give bonds to the Board for the safe custody of the moneys in their hands, and for the faithful performance of their official trusts.

COMMON SCHOOL FUND.

The irreducible Common School Fund, arising from sales of the sixteenth and thirty-sixth sections in each township of the public lands in Oregon, and those taken in lieu thereof, has now reached the amount of \$450,000, in round numbers.

The grant of two sections of land in each township throughout the State for common school purposes will give to public education over 3,000,000 acres, yielding one-third of this amount for mountain lands, not now available; and we have two million acres which may be gradually sold and the proceeds invested for common schools. Adding to this the proceeds of the sales of the Internal improvement lands and the revenue from the Canal and Locks at Oregon City, and it will be readily seen that our Common School Fund may easily reach three million dollars within a reasonable time.

There was distributed last March, to the several coun-

ties, as interest collected on the invested school fund, the sum of \$39,453 71. This is the first assistance which our schools have ever received from the common school grant. A considerably larger sum will be distributed next year, and the work will be followed up by a progressive increase of the distributions from year to year

SUPERINTENDENT OF PUBLIC INSTRUCTION.

I recommend that there be provision of law for the election of a Superintendent of Public Instruction. The Constitution provides that the Governor shall perform the duties of this office, but that the Legislature, after the term of five years from the adoption of the Constitution, may provide for a separate officer, fix his compensation and prescribe his powers and duties. It has been fourteen years since the adoption of the Constitution, while the growing importance of the subject of common schools requires that the entire time of an energetic and competent officer be devoted to its development and control.

As to amendments to the common school law, there are several which may well be adopted, but they can better be explained to a committee of your honorable body than to be discussed in general message.

AGRICULTURAL COLLEGE.

I recommend the passage of an act providing for the more efficient organization and support of the State Agricultural College. The State, in receiving the grant made by Congress for this institution, places itself under obligations to maintain a school of agriculture and the mechanic arts. The number of students provided to be appointed to this institution by the State ought to be doubled, and the funds to arise from the sale of the land belonging to

the College should be marshaled and made available. In all respects we have fallen far behind our sister States in the management of our Agricultural College grant and the organizing of the institution.

The report of the President of the Agricultural College, also the report of the Board of Commissioners appointed by the last Legislature to devise rules, regulations and by-laws and a course of study for said institution, are herewith submitted.

STATE UNIVERSITY.

Of the 46,080 acres of land constituting the University grant, about 30,000 acres remain yet unsold. The fund accumulated from sales and interest, is nearly \$42,000 00. As the lands yet to be disposed of are not as favorably located as those first sold, the whole fund to be realized from this grant will hardly exceed one hundred thousand dollars.

I will suggest that, in organizing this institution, if this fund be not added to the Agricultural College Fund, as suggested by me two years ago, that the University be located in the county, appropriately situated, which will donate the most valuable site, and erect the best buildings, free from charge to the fund, so that the public fund may be kept invested, on interest, for the current support of the University.

SCHOOL FOR MUTES AND THE BLIND.

The School for Mutes, provided for two years ago by resolution, appropriating \$2,000 per annum for its support, has proved a striking success, and under the tuition of a most competent instructor, the pupils have made good progress. With this small beginning as an example, a

permanent State Institution for Mutes may be organized, with no misgivings as to the mode of undertaking the same or as to the problem of successful progress in learning by this unfortunate class in a school of our own.

I recommend that a further appropriation be made for the support of the School for Mutes, and also that appropriation be made for the establishment of an Institution for the Blind. We will be unable to establish such large and expensive endowments for these purposes as are witnessed in older States, but economical provisions for a beginning in the proper way, what humanity and the best interests of the State demand, should be made now.

The report of the Rev. P. S. Knight to the Board of Education, concerning giving views obtained by a late visit to institutions for the deaf and dumb of the State of California, also the report of the Board of Education on this subject, will be found accompanying the report of the Secretary of State.

APPORTIONMENT.

As this is the first session of the Legislative Assembly after the official publication of the United States census of 1870, it will be proper to make a new apportionment of the members of the Senate and House of Representatives, based on said census, according to the provisions of our State Constitution. I will suggest, that in apportioning the Senate, every county having a sufficient number of population is entitled to one Senator and cannot constitutionally be districted with any other county in the election of a member to which she is entitled alone; and no county can be districted with another county except on account of fractions of the number of population making the amount required for one Senator.

CANAL AND LOCKS AT WILLAMETTE FALLS.

This work of constructing a canal and locks for the passage of steamboats and other water craft, over the falls of the Willamette River at Oregon City, provided for at the last session of the Legislature, has been prosecuted by the company, who undertook the same, with vigor and success, although the construction of these works will prove a much more expensive enterprise than was at first estimated; yet the dispositions of the company are such as give warrant to state that the undertaking will be completed within the time required by law, and in the most substantial and durable manner. The importance of this project cannot now be estimated.

WAGON ROADS.

The coast range of mountains is twice crossed by military wagon roads. The Cascade range is also crossed at two different points by wagon roads from the Willamette Valley to Eastern Oregon. There yet remain two important points of the Cascade range demanding wagon roads. A road should be constructed from the Rogue River Valley to the Klamath Lake Basin, and another from Portland to the Dalles, along the left bank of the Columbia river.

The Meacham toll-road over the Blue Mountains should be purchased by the State and made free, on condition that the neighboring counties shall keep it in repair. The toll road running through the canyon of the Umpqua Mountains, in Douglas county, should also be purchased by the State, and made free on the same conditions.

The expenditure on account of all these projects need not exceed \$200,000, and the funds might be provided from moneys arising from sales of swamp and tide lands.

In case provision should be made for constructing these

wagon roads, the act should provide that they be built under contract with the State directly, and that the roads, when built, should be free from toll.

INSANE ASYLUM.

I lay before you, also, the official report of Dr. J. C. Hawthorne, physician in charge of the insane. Ever appealing to the best sympathies of our nature for aid and protection, this unfortunate class of our citizens have not been left without assistance. Our State Asylum still maintains its former high reputation for good management, sanitary arrangements, and successful treatment of its inmates. Nearly forty-three per cent. of those sent to the Hospital have been cured. Those permanently insane are humanely kept, and all their ills alleviated to such extent as can be accomplished in institutions of this class.

The buildings of the Asylum have been greatly enlarged and improved, to meet the wants of the constantly increasing number of inmates.

I call your attention to that portion of this report referring to appropriations to cover former deficiencies, and to sufficient future appropriations to cover all contract allowances for keeping the insane. It is but just to the contractor to make his contract rate equal to cash when negotiated on a cash basis. I concur in the suggestions of the report upon this subject; also, with those made relative to an allowance for the purpose of assisting indigent patients, discharged as cured, in reaching home, or their friends.

I further lay before you the report of Dr. A. D. Ellis, Visiting Physician to the Asylum, which is interesting in its reference to sanitary suggestions.

STATE CAPITOL.

We have reached the time when we may properly enter upon the construction of Capitol buildings. The increasing membership of our Legislative Assembly, the growing importance of our public offices, and the general facilities required for all our extending public interests demand larger and more appropriate accommodations than we now possess. But economy and prudence should still characterize our undertakings in this respect. A reasonable appropriation to begin the structure of a State House would be commendable.

STATE GEOLOGIST.

It may safely be stated that no State in the Union surpasses Oregon in undeveloped mineral resources. Her geology is bold, peculiar and interesting. Her wealth in the useful and precious metals is undoubted. But we do not know what are our hidden treasures. It is probable that no money could be expended more usefully to our future development, than a reasonable sum appropriated to sustain a State Geologist.

IMMIGRATION.

It is customary in the younger States to offer public inducements for the immigration of new settlers within their borders. Much interest is felt by many of our citizens upon this subject, and many inquiries are made relative to it by those in other American States and in foreign countries, who are contemplating removal to Oregon. This subject is worthy of your careful consideration.

SECRETARY AND TREASURER OF STATE.

The reports of these officers submitted to your Honorable

body will be found complete and instructive, giving all the detailed workings of the accounting departments of the State. These officers have been most diligent and faithful in the execution of their several official duties, and I trust their accounts will meet with full approval.

CLERICAL FORCE.

The clerical force allowed the several departments is greatly disproportionate to the work required to be done. The Private Secretary of the Executive office, after performing all the ordinary duties of his office, has performed all the clerical labors of listing in triplicate all the public lands of the State, which have been selected and approved within the past two years. He has recorded the minutes of the Board of School Land Commissioners, kept the accounts of the Mute School, purchased supplies for the same, and performed an immense amount of general clerical labor not belonging strictly to his official duty, while his proper duties in the Executive office have been exacting and laborious.

The Agent of the Board of School Land Commissioners has written all the correspondence relative to the disposal of lands and the conflicts of titles in western Oregon, which has been voluminous and tedious, in addition to his duties touching the lands themselves.

A clerk of swamp lands has been employed in assisting to execute the swamp land act of October 26, 1870, and one also to conduct the correspondence with the Land Office at La Grande, and to keep the accounts of that office.

The services of all these gentlemen have been unremitting, and their work is well exhibited in the permanent records of the State.

CONCLUSION.

In conclusion, I will assure you of my cordial co-operation in all measures calculated to secure the best interests of the State, and to promote the general welfare ; and I express the hope that the results of your deliberations and actions may be satisfactory to your constituents, and a lasting blessing to the whole people.

EXECUTIVE DEPARTMENT, }
SALEM, Sept. 1872. }

L. F. GROVER.